

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**Court Minutes**

**November 16, 2009**

At 9:30 a.m., the court met at 621 Capitol Mall, 10th Floor to begin its court calendar session. Present were Scotland, Presiding Justice; Sims, Associate Justice; Butz, Associate Justice; and Horner, bailiff.

**C058641      AMERICAN STATES INSURANCE COMPANY v. PROGRESSIVE CASUALTY INSURANCE COMPANY; WILSHIRE INSURANCE COMPANY**

Cause called. Lori A. Sebransky argued for appellant. Randolph S. Hicks argued for cross-respondent. Charles F. Saacke argued for cross-complainant and respondent. Cause submitted.

At 10:11 a.m., the court recessed. At 10:12 a.m., the court reconvened.

**C058435      TAYLOR v. BROWN et al.**

Cause called. Gerald D. Langle argued for appellant. Theodore W. Phillips argued for respondent. Cause submitted.

At 10:27 a.m., the court recessed. At 10:29 a.m., the court reconvened with Blease, Associate Justice; Sims, Associate Justice; and Nicholson, Associate Justice.

**C057195      BADSEN, etc. v. BOYLE, as Director, etc.**

Cause called. Charles H. Wolfinger argued for appellant. Mateo Munuz, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:04 a.m., the court recessed. At 11:06 a.m., the court reconvened with Blease, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

**C058026      HOLBERT v. FREMONT INVESTMENT & LOAN**

Cause called. Karen M. Goodman argued for appellant. Timothy M. Ryan argued for respondent. Cause submitted.

At 11:36 a.m., the court recessed. At 11:38 a.m., the court reconvened with Sims, Associate Justice; Raye, Associate Justice; and Robie, Associate Justice.

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**Court Minutes**

**November 16, 2009, Continued**

**C058855      SIERRA OAKS MADISON LIMITED PARTNERSHIP v. RALPH'S GROCERY COMPANY; RED MOUNTAIN RETAIL GROUP, INC., et al.**

Cause called. Mary K. DeLeo argued for appellant. Wayne S. Grajewski argued for respondent Ralph's Grocery Company. Ekwan E. Rhow argued for respondent Red Mountain Retail Group, Inc., et al. Cause submitted.

At 12:18 p.m., the court recessed. At 2:00 p.m., the court reconvened with Scotland, Presiding Justice; Nicholson, Associate Justice; and Robie, Associate Justice.

**C058356      BERMUDEZ et al. v. FULTON AUTO DEPOT, LLC, et al.**

Cause called. Robert G. Padrick argued for appellant. John D. Rochelle argued only for respondent. Cause submitted.

At 2:44 p.m., the court recessed. At 2:44 p.m., the court reconvened.

**C059872      THE PEOPLE v. GREGORY FRED ZIELESCH**

Cause called. Stephen Gilbert, court appointed counsel, argued for appellant. Clara M. Levers, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:14 p.m., the court recessed. At 3:15 p.m., the court reconvened with Scotland, Presiding Justice; Raye, Associate Justice; and Hull, Associate Justice.

**C056685      THE PEOPLE v. RODNEY JOHN SENCY**

Cause called. William J. Routsis argued for appellant. Catherine Chatman, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:38 p.m., the court recessed. At 3:40 p.m., the court reconvened with Nicholson, Associate Justice; Hull, Associate Justice; and Butz, Associate Justice.

**C058673      MONTE CRISTO INVESTMENTS, LLC. V. HYDROSLOTTER CORPORATION et al.**

Cause called. Jerry Y. Fong argued for appellant. Roberta Lindsey Scott argued for respondent. Cause submitted.

At 4:10 p.m., the court recessed until 9:30 a.m., Tuesday, November 17, 2009.

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**November 16, 2009, Continued**

- C058629      THE PEOPLE v. AARON ANDERSON      (Not For Publication)**  
The judgment is affirmed. The trial court is directed to amend the abstract of decision, item 9 ( c ), to reflect that the order for restitution is on behalf of the Sacramento Police Department of Corrections and Rehabilitation.  
HULL, Acting P.J.  
We Concur: Robie, J.  
Butz, J.
- C059046      THE PEOPLE v.      (Not For Publication)**  
**RYAN JAMES ELLIS**  
The judgment is affirmed.  
BUTZ, J.  
We Concur: Sims, Acting P.J.  
Hull, J.
- C059151      THE PEOPLE v.      (Not For Publication)**  
**MONICA ANN COOPER**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We Concur: Robie, J.  
Cantil-Sakauye, J.
- C060343      THE PEOPLE v. JAMES WILLIS      (Not For Publication)**  
The trial court shall modify the minute order and abstract of judgment...  
As so modified, the judgment is affirmed.  
ROBIE, J.  
We Concur: Hull, Acting P.J.  
Butz, J.
- C061688      GENOMIC HEALTH, INC. v.      (Not For Publication)**  
**SHEWRY, as Director, etc.**  
The judgment is affirmed. The Department is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278 (a) (2) . )  
NICHOLSON, Acting P.J.  
We Concur: Raye, J.  
Hull, J.

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At 9:30 a.m., the court met at 621 Capitol Mall, 10th Floor to begin its court calendar session. Present were Scotland, Presiding Justice; Raye, Associate Justice; Cantil-Sakauye, Associate Justice; and Horner, bailiff.

**C059983      SINGH et al. v. CITY OF STOCKTON et al.**

Cause called. Herb Fox argued for appellant. Joe Quinn argued for respondent. Cause submitted.

At 10:06 a.m., the court recessed. At 10:07 a.m., the court reconvened with Blease, Associate Justice; Butz, Associate Justice; and Cantil-Sakauye, Associate Justice.

**C058975      DONLEY v. DAVI, as COMMISSIONER, etc.**

Cause called. Timothy E. Hodgson argued for appellant. Jeffrey A. Rich, Deputy Attorney General, argued and Mary F. Clarke appeared only for respondent. Cause submitted.

At 10:28 a.m., the court recessed. At 10:30 a.m., the court reconvened with Nicholson, Associate Justice; Hull, Associate Justice; and Butz, Associate Justice.

**C059138      NARAYAN v. THE CITY OF SACRAMENTO et al.**

Cause called. Louise A. Judkins argued for appellant. Kathleen T. Rogan, Deputy City Attorney, argued respondent. Cause submitted.

At 10:46 a.m., the court recessed. At 10:46 a.m., the court reconvened.

**C058279      BECK PROPERTIES, INC. v. HAMEED**

Cause called. Donald Lee Cox argued for appellant. William H. Parish argued for respondent. Cause submitted.

At 11:12 a.m., the court recessed. At 2:05 p.m., the court reconvened with Scotland, Presiding Justice; Sims, Associate Justice; and Hull, Associate Justice.

**C060992      Adoption of SMITH, a Minor; SMITH et al. v. CALIFORNIA DEPARTMENT OF SOCIAL SERVICES**

Cause called. Richard G. Fathy argued for appellant. Niromi L. Wijewantha, Deputy Attorney General, argued and Anastasia Baskerville appeared only for respondent. Cause submitted.

At 2:39 p.m., the court recessed. At 2:39 p.m., the court reconvened.

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**November 17, 2009, Continued**

**C057847      THE PEOPLE v. JEFFREY DOUGLAS POWELL**

Cause called. Patricia L. Brisbois argued for appellant. Daniel B. Bernstein, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:04 p.m., the court recessed. At 3:07 p.m., the court reconvened with Sims, Associate Justice; Nicholson, Associate Justice; and Butz, Associate Justice.

**C057666      THE PEOPLE v. JOSHUA WAYNE WEDDLES**

Case deferred.

At 3:16 p.m., the court recessed. At 3:47 p.m., the court reconvened with Sims, Associate Justice; Raye, Associate Justice; and Butz, Associate Justice.

**C058910      THE PEOPLE v. FAUSTINO ANTHONY PEREZ**

Cause called. Stephen Gilbert, court appointed counsel, argued for appellant. Paul E. O'Connor, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:47 p.m., the court recessed. At 3:48 p.m., the court reconvened with Sims, Associate Justice; Hull, Associate Justice; and Butz, Associate Justice.

**C059875      MILENNIUM ROCK MORTGAGE, INC. v. T.D. SERVICE COMPANY**

Cause called. Lawrence J. Dreyfuss argued for appellant. Thomas B. Sheridan argued for respondent. Cause submitted.

At 4:15 p.m., the court recessed until 9:30 a.m., Friday, November 20, 2009.

**C058806      THE PEOPLE v. SIEM YONG**

**(Not For Publication)**

The judgment is affirmed.

HULL, Acting P.J.

We Concur: Robie, J.

Butz, J.

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**November 17, 2009, Continued**

- C059708      THE PEOPLE v.      (Not For Publication)**  
**LORIE DEANN JONES**
- The judgment is amended to stay the sentences imposed on counts 2, 4, 6, 8, and 10 pursuant to section 654. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.
- SIMS, J.  
We Concur: Scotland, P.J.  
Butz, J.
- C060057      THE PEOPLE v.      (Not For Publication)**  
**GREGORY CARL KILGORE**
- Defendant's conviction on count 1 is hereby stricken, and the court security fee imposed under Penal Code section 1465.8 is reduced to \$100. The matter is remanded to the trial court with directions to prepare a corrected abstract of judgment reflecting these changes and to forward a certified copy thereof to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.
- HULL, Acting P.J.  
We Concur: Robie, J.  
Butz, J.
- C060511      THE PEOPLE v. VAN L. PHU      (Certified For Publication)**
- The restitution order is modified to reduce the amount payable to SMUD to \$24,704.91. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment accordingly and to forward a certified copy to the Department of Corrections and Rehabilitation.
- NICHOLSON, J.  
We Concur: Scotland, P.J.  
Robie, J.
- C060567      THE PEOPLE v.      (Not For Publication)**  
**NICKOLAS JOHN VAN DOORN**
- The judgment is affirmed.
- ROBIE, J.  
We Concur: Blease, Acting P.J.  
Hull, J.

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**November 17, 2009, Continued**

- C060646      In re T.S.; THE PEOPLE v. T.S.      (Not For Publication)**  
The disposition order is affirmed. The trial court is ordered to modify the commitment order to reflect oral pronouncement.  
ROBIE, J.  
We Concur:    Blease, Acting P.J.  
                 Hull, J.
- C061475      In re H.S.; THE PEOPLE v. H.S.      (Not For Publication)**  
The section 12022 enhancement is stricken. The maximum period of confinement is reduced to four years eight months. In all other respects, the judgment is affirmed.  
ROBIE, J.  
We Concur:    Nicholson, Acting P.J.  
                 Butz, J.

**November 18, 2009**

**There are no minutes for this date.**

**November 19, 2009**

- C057856      THE PEOPLE v.      (Not For Publication)**  
**RICHARD GLEN WILLIAMS**  
The trial court is directed to prepare and forward to the Department of Corrections and Rehabilitation a new abstract of judgment reflecting the modified sentence of life without parole plus one year for the enhancement. The judgment, as so modified, is affirmed.  
BLEASE, Acting P.J.  
We Concur:    Robie, J.  
                 Cantil-Sakauye, J.
- C059354      THE PEOPLE v.      (Not For Publication)**  
**BRANDON DASHAWN BAILEY**  
The judgment is affirmed.  
SIMS, J.  
We Concur:    Scotland, P.J.  
                 Butz, J.

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**November 19, 2009**

- C059738      THE PEOPLE v. DEANDRE SMITH      (Not For Publication)**  
The judgment is affirmed.  
ROBIE, J.  
We Concur: Nicholson, Acting P.J.  
Raye, J.
- C059776      THE PEOPLE v.      (Not For Publication)**  
**CHOKCHAI KRONGKIET**  
The judgment is affirmed.  
BUTZ, J.  
We Concur: Scotland, P.J.  
Sims, J.
- C059848      THE PEOPLE v.      (Not For Publication)**  
**STEVEN RICHARD WOLFF**  
The judgment is affirmed, except that the matter is remanded to the trial court with directions to (1) recalculate custody credits to include credits available to defendant in the Tulare County cases, (2) amend the abstract of judgment to reflect the custody credits awarded in each case, the prison terms imposed on the Tulare County cases, and the total aggregate prison term, and (3) send a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.  
SCOTLAND, P.J.  
We Concur: Sims, J.  
Cantil-Sakauye, J.
- C060002      THE PEOPLE v.      (Not For Publication)**  
**CHRISTOPHER HOWARD JONES**  
The judgment is affirmed.  
HULL, J.  
We Concur: Scotland, P.J.  
Sims, J.
- C060125      THE PEOPLE v.      (Not For Publication)**  
**SHAWN DOUGLAS MOORE**  
The judgment is affirmed.  
ROBIE, J.  
We Concur: Hull, Acting P.J.  
Butz, J.



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**November 19, 2009**

- C060190      THE PEOPLE v.      (Not For Publication)**  
**HAURILIO SILVA VALENCIA**  
The judgment is affirmed.  
ROBIE, J.  
We Concur: Scotland, P.J.  
Nicholson, J.
- C060401      THE PEOPLE v.      (Not For Publication)**  
**JEFFREY DEWAYNE POWELL, JR.**  
The judgment is affirmed.  
ROBIE, J.  
We Concur: Blease, Acting P.J.  
Hull, J.
- C060510      THE PEOPLE v.      (Not For Publication)**  
**VICTORIA LOUISE MICKELE**  
The judgment is affirmed, except that the matter is remanded in accordance with the views expressed herein for a determination of whether defendant is entitled to custody credits for time spent in substance abuse rehabilitation with the Eagle Recovery Program. If an award of additional custody credits is justified, the trial court is ordered to prepare an amended abstract of judgment that includes the additional time credits and to forward a certified copy of the same to the Department of Corrections and Rehabilitation.  
BUTZ, J.  
We Concur: Scotland, P.J.  
Sims, J.
- C060592      THE PEOPLE v.      (Not For Publication)**  
**MIGUEL GARCIA ROMO**  
The judgment is affirmed.  
NICHOLSON, J.  
We Concur: Sims, Acting P.J.  
Raye, J.
- C060630      THE PEOPLE v.      (Not For Publication)**  
**MICHAEL PATRICK WIGGINS**  
The judgment is modified... As modified, the judgment is affirmed. The court is directed to so amend the abstract of judgment and include therein the \$25 work program fee, and to send a copy of the amended abstract to the Department of Corrections and Rehabilitation.  
SCOTLAND, P.J.  
We Concur: Blease, J.  
Sims, J.

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**Court Minutes**

**November 19, 2009**

- C061393      THE PEOPLE v.      (Not For Publication)**  
**BERTRAND J. LEWIS, JR.**  
The judgment is modified by lifting the stay on the \$400 section 1202.44 fine in case No. 08F02715. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect that the defendant must pay the \$400 probation revocation fine, and to forward a copy of the amended abstract to the Department of Corrections and Rehabilitation.  
SCOTLAND, P.J.  
We Concur: Hull, J.  
Cantil-Sakauye, J.
- C061901      THE PEOPLE v.      (Not For Publication)**  
**JOSEPH MICHAEL WHEAT**  
The judgment is affirmed.  
ROBIE, J.  
We Concur: Nicholson, Acting P.J.  
Butz, J.
- C061999      THE PEOPLE v. PYSEY BUE      (Not For Publication)**  
The main jail booking fee imposed to Government Code section 29550.2 shall be stricken from the May 13, 2009, minute order; the judgment is otherwise affirmed.  
HULL, J.  
We Concur: Scotland, P.J.  
Cantil-Sakauye, J.
- C057274      THE PEOPLE v. ANTOINE DUPREE TYSON et al.**  
**BY THE COURT:**  
Appellant Antoine Dupree Tyson's petition for rehearing is denied.  
BLEASE, Acting P.J.
- C058865      THE PEOPLE v. JOSEPH HATHORNE NUCCIO**  
**BY THE COURT:**  
Appellant's petition for rehearing is denied.  
BLEASE, Acting P.J.

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**Court Minutes**

**November 20, 2009**

At 9:30 a.m., the court met at 621 Capitol Mall, 10th Floor to begin its court calendar session. Present were Blease, Associate Justice; Nicholson, Associate Justice; Raye, Associate Justice; and Haskett, bailiff.

**C053715 WILLIG et al. v. MAMMOTH MOUNTAIN SKI AREA**

Cause called. A. Barry Cappello argued and Jay-Allen Eisen appeared only for appellants. Paul J. Killion argued and John E. Fagan and Jill Haley Penwarden appeared only for respondent. Cause submitted.

At 9:53 a.m., the court recessed. At 9:57 a.m., the court reconvened with Blease, Associate Justice; Nicholson, Associate Justice; and Cantil-Sakauye, Associate Justice.

**C049069 THE PEOPLE v. SARUN CHUN**

Cause called. Mark Greenburg, court appointed counsel, argued for appellant. Melissa J. Lipon, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:16 a.m., the court recessed. At 10:18 a.m., the court reconvened with Sims, Associate Justice; Nicholson, Associate Justice; and Cantil-Sakauye, Associate Justice.

**C059885 VAN HORN v. WEST VALLEY CONSTRUCTION COMPANY**

Cause called. Edward Vincent Rizzuto argued for appellant. Phillip R. Bonotto argued and Florela Catanesescu appeared only for respondent. Cause submitted.

At 10:34 a.m., the court recessed. At 10:40 a.m., the court reconvened with Sims, Associate Justice; Raye, Associate Justice; and Cantil-Sakauye, Associate Justice.

**C060451 FIRST PRESBYTERIAN CHURCH OF ROSEVILLE v.  
PRESBYTERY OF SACRAMENTO  
FAIR OAKS PRESBYTERIAN CHURCH v.  
PRESBYTERY OF SACRAMENTO; SYNOD  
OF THE PACIFIC**

Cause called. Jill J. Ho argued for appellants. David W. Tyra argued for appellant. Robert H. Johnson argued for respondents. Cause submitted.

At 11:13 a.m., the court recessed until 9:30 a.m., Monday, November 23, 2009.

**COURT OF APPEAL  
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**Court Minutes**

**November 20, 2009, Continued**

- C060864      THE PEOPLE v.      (Not For Publication)**  
**TROY ALLEN BENNETT**  
The judgment is affirmed.  
BUTZ, J.  
We Concur: Blease, Acting P.J.  
Sims, J.
- C061685      THE PEOPLE v.      (Not For Publication)**  
**DANNY JAMES MITCHELL**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We Concur: Robie, J.  
Cantil-Sakauye, J.
- C059615      NELSON, as Trustee, etc. v.      (Certified For Publication)**  
**EXXON MOBIL CORPORATION**  
**C060271      COOK ENDEAVORS v. THE SUPERIOR**  
**COURT OF SACRAMENTO COUNTY;**  
**EXXON MOBIL CORPORATION**  
In the appeal in case No. C059615, the judgment (order) substituting Cook Endeavors for the Trust as plaintiff in this action is affirmed. In case No. C060271, the alternative writ, having fulfilled its purpose, is hereby dissolved, and the stay issued by this court on December 4, 2008, is hereby vacated. ...  
CANTIL-SAKAUYE, J.  
We Concur: Sims, Acting P.J.  
Nicholson, J.
- C060710      GOMEZ v. THE SUPERIOR COURT OF      (Certified For Publication)**  
**LASSEN COUNTY; FELKER, as Warden,**  
**etc., et al.**  
**C060773      JUAREZ v. THE SUPERIOR COURT OF**  
**LASSEN COUNTY; THE PEOPLE OF THE**  
**STATE OF CALIFORNIA**  
The petitions for writ of mandate are denied.  
SCOTLAND, P.J.  
I concur: Raye, J.  
In concur in the result. But, without calling into question the abilities or integrity of California's commissioners who provide vital support to our judicial system, it is a result that gives one pause as it holds that a nonjudicial officer is captain of the gate when a person being held in confinement seeks the protections of the "Great Writ." ...  
Hull, J.

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**Court Minutes**

**November 20, 2009, Continued**

- C056222      TABAIE v. STOCKTON UNIFIED      (Not For Publication)**  
**SCHOOL DISTRICT**  
The judgment is reversed and the matter is remanded to the trial court with instructions to grant plaintiff's motion for directed verdict. Costs on appeal are awarded to the plaintiff. (Cal. Rules of Court, rule 8.278 (a) . )  
NICHOLSON, J.  
We Concur: Scotland, P.J.  
Cantil-Sakauye, J.
- C058161      In re B.G.; SACRAMENTO COUNTY      (Not For Publication)**  
**DEPARTMENT OF HEALTH AND**  
**HUMAN SERVICES v. A.G.**  
The order of the juvenile court is affirmed.  
CANTIL-SAKAUYE, J.  
We Concur: Nicholson, Acting P.J.  
Raye, J.
- C061018      In re L.D. et al.; SACRAMENTO      (Not For Publication)**  
**COUNTY DEPARTMENT OF HEALTH**  
**AND HUMAN SERVICES v. LERON D.**  
The disposition order is vacated and the matter is remanded to the juvenile court with directions to order DHHS to make proper inquiry and to comply with the notice provisions of ICWA. ...  
HULL, J.  
We Concur: Scotland, P.J.  
Cantil-Sakauye, J.
- C058411      MYERS v. TRENDWEST RESORTS, INC.      (Certified For Publication)**  
**THE COURT:**  
It is ordered that the opinion filed herein on October 26, 2009, be modified...  
This modification does not change the judgment.  
SIMS, Acting P.J.  
Robie, J.  
Cantil-Sakauye, J.

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**November 20, 2009, Continued**

**C060213      THE PEOPLE v. MILES EDGAR STARK      (Not For Publication)**

THE COURT:

It is ordered that the opinion filed in this case on November 5, 2009, and modified on November 9, 2009, be modified...

This modification does not change the judgment.

FOR THE COURT:

SCOTLAND, P.J.

Raye, J.

Butz, J.